IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
July 18, 2006 Session

STATE OF TENNESSEE v. LEMAR N. BROOKS

Direct Appeal from the Circuit Court for Montgomery County
No. 40877 John H. Gasaway, III, Judge

No. M2003-02304-CCA-R3-CD - Filed September 26, 2006

The defendant, Lemar N. Brooks, was convicted by a Montgomery County Circuit Court jury of two counts of first degree premeditated murder and sentenced to consecutive terms of life imprisonment. In this consolidated appeal, he essentially presents the following issues for our review: (1) whether the trial court erred by not instructing the jury that the State's key witnesses were accomplices as a matter of law, whose testimony had to be corroborated by independent evidence; (2) whether the evidence was sufficient to show premeditation; and (3) whether the trial court erred by denying the defendant's petition for writ of error coram nobis on the basis of newly discovered evidence. Following our review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, J., joined. GARY R. WADE, P.J., Not Participating.

Roger E. Nell, District Public Defender, and Fred W. Love, Assistant Public Defender, for the appellant, Lemar N. Brooks.

Paul G. Summers, Attorney General and Reporter; Brent C. Cherry and Helena Walton Yarbrough, Assistant Attorneys General; John Wesley Carney, Jr., District Attorney General; and Arthur F. Bieber, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS and PROCEDURAL HISTORY

On May 29, 1999, the victims in this case, twenty-year-old Lawrence Lee Ream, Jr., and thirteen-year-old Veronica Michelle Burnley, were found shot to death in room 11 of the Oak Haven Motel in Clarksville. The following day, Samuel Vazquez and Sophia Ross, who had been in the motel room with the defendant and the victims at the time of the murders, gave separate statements

to police identifying the defendant as the culprit of the crimes. Specifically, Ross stated that the group had been watching a movie when the defendant suddenly pulled a gun and shot the victims. Vazquez stated that he had fallen asleep watching the movie but was awakened by the sound of gunshots. He said that he was fleeing from the room behind Ross when he heard two more gunshots.

The defendant was subsequently charged with the first degree premeditated murder of the victims, tried before a circuit court jury, convicted, and sentenced to consecutive terms of life imprisonment. While the direct appeal of his convictions was pending in this court, the defendant filed a petition for writ of error coram nobis in the trial court and a motion in this court requesting that the proceedings in his direct appeal be stayed pending the outcome of the petition. Following a hearing, the trial court denied the petition and the defendant appealed that decision. Consequently, both appeals are now consolidated for our review.

Trial

State's Proof

The State's first witness at the defendant's March 19-22, 2001, trial was Harry Patel, who testified that he was the manager of the Oak Haven Motel, located at 1425 Fort Campbell Boulevard in Clarksville. Patel identified a motel registration card which reflected that on May 27, 1999, a "Jimmie L. Carr" registered a party of two for the nights of Thursday, May 27, and Friday, May 28, in room 11 of the motel. Patel said that when the party failed to meet the 11:00 a.m. check-out time on May 29, he went to the room, found the door ajar, saw two individuals lying on the double bed farthest from the door, and telephoned the police.

Clarksville Police Officer Leo Rowe testified that he and Officer Jason Coombs, driving separate patrol cars, simultaneously pulled into the motel parking lot at approximately 12:20 p.m. He said the door to room 11 was ajar when they arrived, and they saw two individuals lying on a bed inside the room. When they received no response to their calls, they entered the room to find dried blood on both individuals.

Anamari Rivera, the female victim's mother, testified that approximately a week before the murders she dropped thirteen-year-old Veronica at a softball field near her school with the understanding that she would return for her after the softball game. She said she was unable to find Veronica when she returned for her at 9:00 p.m. and, upon questioning one of her friends, learned that she had already left with a boy in a blue car. Rivera said the next time she saw her daughter was when she was called to identify her dead body at the morgue.

Lawrence Ream, Sr., father of the male victim, testified that he last saw his son alive approximately two weeks before the murder. He stated that on May 29, 1999, the police called him to the morgue to identify his son's body.

Detective Timothy Saunders of the Clarksville Police Department testified he was responsible for transporting to the evidence room the two lead projectiles that police officers discovered in the motel room, two projectiles recovered from the female victim's body, and the fragment of a projectile recovered from the male victim's body. On cross-examination, he stated that he had no idea if any DNA analysis was conducted on blood samples he collected from sites outside room 11, including small blood spots on the sidewalk in front of room 15 and on the doors to rooms 15 and 16.

Detective Scott Cutler of the Clarksville Police Department described the evidence he collected from the motel room, which included the following items: three small bags of marijuana, a box of sandwich bags, a Swisher Sweet cigar box, and a Swisher Sweet cigar from the nightstand; a large bag of marijuana from the dresser; two rolls of cash totaling $159 and a set of swing scales from a backpack in the dresser; and fingerprints from the door jamb. He stated that he also dusted the door of the room for fingerprints but was unable to obtain any prints from that surface. On cross-examination, he acknowledged many items were in the room, including beverage containers and cigarette butts, that he did not dust for fingerprints. He also said that he did not know if DNA analysis was conducted on the blood samples collected from the sidewalk outside the motel.

Detective Samuel Knolton of the Clarksville Police Department testified that he recovered a lead projectile from the floor beneath the victims' bed and another lead projectile from within the bed's box springs. He identified crime scene diagrams he had prepared of the scene and stated, among other things, that the distance between the victims' bed and the wall measured twenty-one inches. On cross-examination, he acknowledged that the actual maneuverable distance between the wall and the bed was only thirteen to fifteen inches due to a heating or air conditioning unit that protruded six to eight inches into the room.

Samuel Vazquez[1] testified that he was still in high school in 1999 and by the time of trial had known the defendant for approximately seven years. He said the defendant came by his house at 1:30 or 2:00 p.m. on May 28, 1999, driving his cream-colored Isuzu Trooper, borrowed Vazquez's cream-colored, zippered shirt, and left. Upon request, Vazquez identified the shirt he had loaned to the defendant, which was marked as Exhibit 35 and admitted into evidence. He said the defendant was still wearing the shirt at 7:00 or 8:00 p.m. when he met him at a local McDonald's restaurant. He stated that he and the defendant left the McDonald's together in the defendant's vehicle, drove around together smoking marijuana, and then went to "Showboat," where they played video games and pool until midnight when the establishment closed. They then picked Ross up at the home of her friend, Monique, and Ross smoked the last of the defendant's marijuana with them as they drove to the Oak Haven Motel to see "Mike Larry," the name by which they knew Ream, Jr. In vague and confusing testimony, Vazquez suggested that Ross, whom they had seen at Showboat earlier in the evening, had prearranged for the defendant to take her to buy marijuana from Ream to bring home to Monique.

[1]This witness testified that his full name was Oswaldo Samuel Vazquez-Marn II. However, to avoid confusion, we have chosen to use the name by which other witnesses refer to him throughout the record.

Vazquez testified that he had known Ream since high school and was somewhat aware of his reputation as a drug dealer but did not know where to find him. He said he asked the defendant to drop him off at his home because he had been smoking marijuana all day and was tired, but the defendant instead turned into the Oak Haven Motel and pulled in front of room 11. He stated that they arrived at Ream's motel room at 12:30 or 1:00 a.m. and were admitted by Ream, who had a young girl in the room with him. He said that the group talked for a while, with Ross sitting at the head of a double bed, the defendant on a chair by the bathroom, and Vazquez on the foot of Ross's bed. At some point, Ream took a gallon-sized plastic bag half-filled with marijuana out of the night stand and rolled a "blunt," or marijuana cigarette, which everyone but the young girl smoked. Vazquez estimated that the bag contained a little over a quarter pound of marijuana and said that a quarter pound of marijuana was worth $300 to $400.

Vazquez testified that he lay down across the foot of the bed and dozed off while the group was watching the movie "Aliens." He said that he awoke at one point to find Ream and the defendant gone, that he asked the young girl where they were, and that Ross answered that they were in the bathroom. When he checked, he saw one of the men sitting on the toilet while the two men talked. Vazquez testified he had no idea what they were talking about, but neither man appeared to be angry. He said he returned to bed and fell asleep again but was later reawakened by the sound of two gunshots. The room was filled with smoke and he noticed that it was 4:11 a.m. and the same movie was still playing on the television. He said he saw a figure dressed in black standing with an outstretched arm at the foot of the victims' bed, heard the young girl moaning, and saw Ross jump over her bed and run out the motel room door. He testified that he heard two more gunshots as he ran out the door behind Ross. He stated that he never saw the shooter's face but thought he saw him holding a handgun.

Vazquez testified that he was behind the motel a few minutes after the shooting, with Ross right in front of him, when he saw the defendant run to his vehicle, now parked behind the motel. He said that the defendant was wearing a white, tank-top style undershirt instead of the cream-colored, zippered shirt he had been wearing earlier in the evening. Vazquez stated that the defendant called for him to come on, and that, after hesitating a few seconds, he complied. He said he got into the backseat and thought that Ross was already in the front passenger seat when he got into the vehicle. As he was climbing in, or soon thereafter, he asked the defendant, "[A]re they dead?" and the defendant turned around, looked at him, and said, "[T]hey got to be, I shot them both in the head." Vazquez testified that the defendant drove to Vazquez's house, instructed him to get out, and then drove a little further before instructing or perhaps shoving Ross out of the vehicle as well. Vazquez said he did not remember seeing the defendant with a gun.

Vazquez testified that he was "high" at the time and frightened by what had just occurred. He stated that he and Ross stood together outside his house for a few minutes asking each other what had just happened before going inside, where they discussed the incident further. He testified that he drove Ross home thirty or forty minutes later, just as the sun was beginning to rise, and then returned home and tried to sleep. Approximately five or six hours after that, he drove a friend back

to her school in Cookeville and was still in Cookeville when he gave a statement by telephone to Detective Miller of the Clarksville Police Department.

On cross-examination, Vazquez testified that the defendant, still dressed in his cream-colored shirt, was sitting in the chair by the bathroom when he fell asleep and that the chair was empty when he was awakened by the gunshots. He thought he might have seen the defendant carrying the shirt in his hand as he ran to his vehicle after the shooting. He testified he did not see the man in black come into the motel room and could not recall saying that he did. He also could not recall having ever said that he and the defendant searched for Ross in the defendant's vehicle or that, when they found her, the defendant held a gun on him and threatened to shoot if Ross did not get into the vehicle. He acknowledged that in his first statement to police, made approximately twelve hours after the shooting, he failed to mention that the defendant told him that he had shot both victims in the head. Vazquez explained the numerous inconsistencies in his testimony and his apparent inability to remember details of the incident by stating that he had smoked ten or eleven blunts by the time of the shooting. He denied that he had killed or robbed the victims or that he had gone to the motel room with the intention of robbing them. Finally, he acknowledged that he was currently on probation for possession of marijuana.

Dr. Bruce Levy, the medical examiner who performed the autopsy of the victims' bodies, testified that Burnley received one gunshot wound to the back of her head in which the bullet struck her brain stem, causing instantaneous death, and a second gunshot wound to the back of her right shoulder in which the bullet struck her spinal cord. He said that the gunshot wound to Burnley's spinal cord would have resulted in paralysis below the level of the injury. He testified that Ream received two gunshot wounds, either of which would have resulted in his death: a gunshot wound to the top left side of his head, in which the bullet perforated his brain and exited from the left side of his head, and a second gunshot wound to his chest, in which the bullet perforated his heart and left lung before exiting through his back. Dr. Levy said that he was unable to tell the distance at which the gunshots to the victims' heads had been fired but was able to determine that the shots to their bodies were each fired from a distance of six inches or less. He opined that, based on his findings, the shooter had to have been standing somewhere near the middle of the side of the bed when the shots were fired.

Tennessee Bureau of Investigation ("TBI") Agent Steve Scott, an expert in the field of firearms identification, testified that the four lead projectiles[2] recovered in the case were .38 or .357 caliber bullets which had been fired from the same gun.

[2]Agent Scott testified that there was a very small fragment missing from one of the lead projectiles which had been recovered from the motel room. He also said that a tiny fragment of a projectile recovered from Ream's body was too small for him to determine anything about the type of bullet from which it had originated.

Sophia Ross[3] testified that she was a graduating high school senior in May 1999 and was acquainted with Vazquez, the defendant, and Ream. She said she saw the defendant at Showboat on the evening of May 28, 1999, but made no arrangements for him to meet her later in the evening. Later that night, however, she was visiting with Monique, Monique's brothers, and some other friends when the defendant and Ream showed up at Monique's house in the defendant's white jeep.[4] Ross testified that when someone in the group suggested that they get some marijuana, she collected approximately $40 from her friends and left with the defendant and Vazquez to find "Mike Larry" at the Oak Haven Motel. She said she was unaware of Ream's reputation as a drug dealer, but the defendant knew that he sold marijuana and that he was staying at the motel.

Ross testified that a girl she did not know was inside Ream's motel room with him when she, Vazquez, and the defendant arrived. She said she gave Ream $40 and he gave her some marijuana, which they rolled into blunts and smoked while they talked and watched "Alien" movies on television. She said she was leaning against the headboard of the double bed closest to the door, Vazquez was lying across the foot of her bed facing the television, and the victims were lying together on the second double bed when she saw the defendant rise from the chair in the corner where he had been sitting, walk alongside the victims' bed, and start shooting at Ream.

Ross testified that the defendant was standing about halfway along the side of the victims' bed. She thought she heard only one gunshot before she fled from the motel room and recalled that she heard another shot as she started across Highway 41-A. She said she looked back during her flight to see Vazquez running across the highway with her. She stated that she crossed the highway, ran through the parking lot of a Walgreens on the corner and started down West Concord Street in the direction of Monique's house. At about that time, however, she saw that the defendant was slowly driving his vehicle down the street. She said that she and Vazquez both tried to hide from the defendant in a clump of woods near an apartment complex, but he spotted them, pointed his gun at them, and threatened to kill them if they did not get in his vehicle. She stated that the defendant was wearing the same shirt he had worn throughout the evening, which was a white polo shirt without a zipper.

Ross testified that she got into the back of the defendant's vehicle while Vazquez got into the front. She said the defendant, who kept his gun pointed at them, repeatedly told them as he drove that he should kill them both right then. She stated the defendant took them to Vazquez's house, forced them out of the vehicle at gunpoint, threatened to kill them if they reported what had just transpired, and left. She said that Vazquez then drove her back to Monique's house, where she immediately awakened Monique and her mother to tell them what had happened. As she recalled, the sun was beginning to rise as Vazquez drove her home.

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[3]This witness testified at trial that her full name was Sophia Ninette Ross-Hood, but for the purpose of this opinion we have chosen to refer to her by the name she used at the time of the shootings.

[4]Ross, like Vazquez, appeared to use the word "jeep" as a generic term for a sports utility vehicle. Elsewhere in her testimony, Ross referred to the same vehicle as the defendant's "Trooper."

Ross testified that both Monique and her mother wanted her to telephone the police, but she was too frightened to do so. She believed, however, that Monique's mother later contacted the police. According to Ross, she had, before the shooting, been planning a Memorial Day weekend visit with her father in Flint, Michigan. She said when she learned that the bus ticket her father sent had arrived, she left that same afternoon for Michigan. Ross explained that she was very frightened of the defendant and wanted to get out of town. She said she was in Michigan when she gave a telephone interview with Detective Miller of the Clarksville Police Department.

On cross-examination, Ross testified she did not remember the defendant and Ream going to the bathroom together before the shooting or Vazquez waking and asking her where the men were. She said she and Vazquez fled from the front of the motel across Highway 41-A and did not run behind the motel. She stated that she exaggerated when she told the police in her statement that she had run all the way home to Monique's house, explaining that she was still shaken from her experiences at the time she made the statement. She said she did not know anything about guns and therefore could only describe the defendant's weapon as a little gun. She testified she never went into Vazquez's home and spent only a few minutes discussing the shooting with him before he drove her home. She estimated that it was about 5:00 a.m. when she reached Monique's home and reiterated that she had awakened Monique and her mother immediately upon her arrival at their home.

Detective Robert Miller of the Clarksville Police Department testified that he obtained a search warrant for the defendant's home and vehicle as part of his investigation of the murders. He identified Exhibit 35 as an off-white, short-sleeved shirt with a zipper and collar, which he found in the defendant's vehicle. Detective Miller testified that he did not request DNA analysis of the blood swabs collected outside rooms 15 and 16 of the motel because the information he obtained from his investigation indicated that they were unconnected to the crime scene. He conceded he did not submit Exhibit 35 for any kind of analysis, despite the fact that there were several stains visible on the shirt. He said he interviewed both Sophia Ross and Sam Vazquez over the telephone on May 30, 1999.

On cross-examination, Detective Miller acknowledged there was no physical evidence linking the defendant to the crime; he did not find the defendant's blood, fingerprints, or hair at the crime scene or the victims' blood in the defendant's home or vehicle. He further acknowledged that he never found the murder weapon. He confirmed that he spoke with a number of witnesses during his investigation of the case, including Monique Harrison, who told him that it was 11:00 a.m. or 12:00 p.m. on May 29, 1999, when Ross told her about the shooting, and not at daybreak as Ross indicated in her trial testimony. Detective Miller said that he learned from the National Weather Service that daybreak in Nashville was at 5:32 a.m. on May 29, 1999. He acknowledged that there were a number of inconsistencies between Ross's trial testimony and the original statement she gave him about the shooting. Ross, for example, told him in her statement that she had run all the way home. Furthermore, she never said anything in her statement about Vazquez running across the highway with her as she fled from the scene. Finally, Detective Miller testified that the defendant

turned himself into the Berry Hill Police in Nashville on June 2, 1999, after the search warrants had already been executed on his home and vehicle.

By stipulation of the parties, the TBI laboratory reports on the evidence submitted to the lab for analysis were admitted as exhibits to the trial. Among other things, they reflected that the green plant material found in the motel room consisted of 2.6 and 4.7 grams, respectively, of marijuana.[5]

Defendant's Proof

Troy Pruitt, who said he was currently in prison serving a sentence for aggravated robbery, testified that he was driving home from work at approximately 3:00 a.m. on the morning of May 29, 1999, when he spotted the defendant walking down Judy Lynn Drive in Clarksville. He said he stopped and asked the defendant, who was an acquaintance, if he needed a ride but the defendant refused, pointing to a nearby house and telling him that it was his destination. Pruitt estimated that the Oak Haven Motel was a five-minute drive or a forty-five-minute walk from the place he saw the defendant. On cross-examination, he acknowledged that he never approached the police with the above information.

Geremie Richard Ebert testified that, in May 1999, he was sixteen years old and lived in Cadiz. He said he was babysitting Shalonda Nance's and Lisa Cunningham's respective children at Nance's home in Cadiz sometime in May 1999, when the defendant showed up at 4:00 or 4:30 a.m. wanting to know where the women were. Ebert testified that he fell asleep after the defendant arrived and that the defendant remained in the home with him until he awoke a couple of hours later, somewhere around 6:00 a.m., as the sun was beginning to rise and the women were returning home. Ebert testified that the defendant's demeanor was normal. However, upon further questioning, he said he was not sure that the defendant was the man he saw that morning. On cross-examination, Ebert was unable to recall the number of children he had babysat, their names, or their ages.

Lisa Cunningham testified that she and Shalonda Nance returned home at daybreak on May 29, 1999, to find the defendant in her home with their babysitter, Geremie Ebert. She said she thought the defendant had been waiting for some time for their return because he appeared worried about them and she overheard him asking Nance where they had been. Otherwise, the defendant's demeanor seemed normal. Cunningham estimated she and Nance returned home at approximately 5:30 a.m. She acknowledged she told Detective Miller that the defendant had told them that, should anyone ask, he had been in the home all evening. Cunningham testified that the defendant never made such a statement and that she merely told the police officers what she thought they wanted to hear. She explained that there was an odor of smoked marijuana in her home when the officers questioned her and she was afraid that she would be arrested.

Rockelle Daniels testified that she was previously employed as an investigator with the public defender's office and in that capacity interviewed both Vazquez and Ross. She said that

[5]The three small bags of marijuana found in the nightstand were admitted as a collective exhibit.

Vazquez, who was initially reluctant to talk about the incident, essentially confirmed the details he had provided in his statement to police but then volunteered that he had seen the outside door to the motel open and the man dressed in black enter the room. Vazquez also told her that he never saw the defendant with a gun and that the defendant ran from the motel room behind him as he and Ross fled to the back of the motel. Daniels further testified that Vazquez told her that he asked the defendant if the victims were dead and the defendant replied that they were because he had shot them in the head.

Daniels testified that she had great difficulty locating Ross but was eventually able to interview her as well. She said that in her account of the incident, Ross, among other things, stated the following: that the portion of her statement to police in which she said she ran all the way home was a mistake; that she was running across the highway when she heard Vazquez call to her to stop, looked back, and saw the defendant holding a gun on Vazquez; that she tried to hide in a clump of bushes near an apartment building, but the defendant found her and threatened to kill Vazquez if she did not get in the vehicle; that the defendant then took her and Vazquez to Vazquez's house; and that it was 11:00 a.m. or 12:00 p.m. by the time she returned to Monique's house.

The defendant elected not to testify. Following deliberations, the jury found him guilty of both counts of first degree premeditated murder.

Error Coram Nobis Hearing

Judge Justin Saunders, who said he was currently serving a prison sentence for aggravated robbery, testified that sometime before the defendant's trial he was at a party when Ross shouted "out of the blue" that she had shot "Mike Larry"[6] in the head. Saunders testified he did not go to the police with the information because he was engaging in illegal activity at the time. On cross-examination, he acknowledged there were many other individuals at the party who heard Ross's statement and speculated that they were too frightened to come forward. He agreed that Ross was drunk at the time she made the statement. He denied that he was a member of a gang and said that he was unaware that the defendant was a gang member or that the defendant had appeared on the television show, "Montel," saying that he was a gang member.

Officer John Skidmore, called as a witness by the State, testified that he was an intelligence agent with the Criminal Intelligence Unit of the Clarksville Police Department. He said that Saunders had told him in the past that he was a member of the gang known as "M One," or "Murder One Crips."

After reviewing the trial transcript, the trial court entered an order on October 13, 2005, denying the petition for writ of error coram nobis. In its oral findings of fact and conclusions of law, issued the same day, the trial court found, among other things, that Saunders' testimony was not

[6] Apparently, this is the name by which he knew the victim, Lawrence Lee Ream, Jr.

credible and likely would not have been believed by the jury. The trial court therefore concluded that the evidence would not have changed the outcome of the trial.

ANALYSIS

I. Accomplice Jury Instruction

The defendant first argues that the trial court erred by not instructing the jury that Ross and Vazquez were accomplices as a matter of law, whose testimony had to be corroborated by independent evidence before the jury could find the defendant guilty of the murders. The State argues that the defendant waived the issue by failing to object to the trial court's proposed jury instructions and by failing to clearly identify the issue in his motion for a new trial. The State further argues that the trial court correctly instructed the jury on the law as it related to the evidence presented in the case.

The record reflects that the defendant never asked the trial court to instruct the jury that Ross and Vazquez were accomplices as a matter of law. Furthermore, the defendant did not object when the trial court first proposed and then issued the pattern jury instruction on accomplices, in which it instructed the jury that the testimony of an accomplice must be supported by independent evidence and that whether the witnesses were accomplices in the alleged crime was a question for the jury to determine. The failure to object to the omission of a jury instruction generally waives the issue for appellate review. See Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error."). Additionally, this court held in State v. Anderson, 985 S.W.2d 9, 17-18 (Tenn. Crim. App. 1997), that "[i]n the absence of a special request, the trial court does not err by failing to instruct the jury about accomplice testimony even if the circumstances of the case warrant such an instruction." Thus, we agree with the State that the defendant has waived this issue for appellate review.

Further, an examination of the record shows that the facts concerning Ross's and Vazquez's participation were neither clear nor undisputed. Vazquez specifically denied that he went to the motel room with the intention to kill or rob the victims, and Ross testified that she was surprised and frightened by the defendant's actions. Furthermore, Ross and Vazquez were never charged with the victims' murders. We, therefore, conclude that the proof would not have justified an instruction that the witnesses were accomplices as a matter of law.

II. Sufficiency of the Evidence

The defendant next contends that the evidence at trial was insufficient to sustain his first degree premeditated murder convictions. When the sufficiency of the convicting evidence is challenged on appeal, we must consider "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789,

61 L. Ed. 2d 560, 573 (1979); see also Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt."); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)). A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal, a convicted defendant has the burden of demonstrating that the evidence is insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The defendant was convicted of two counts of first degree murder, defined as "[a] premeditated and intentional killing of another." Tenn. Code Ann. § 39-13-202(a)(1) (2003). Premeditation is defined as

> an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Id. § 39-13-202(d).

Whether premeditation exists is a question for the jury to determine based on the evidence, and it may be established by the defendant's conduct and the circumstances surrounding the killing. See State v. Suttles, 30 S.W.3d 252, 261 (Tenn. 2000); State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997). Our courts have listed a number of different facts from which premeditation may be inferred, including evidence the defendant had a motive for the killing; evidence that the defendant procured a weapon; the defendant's declarations of an intent to kill; evidence the defendant made preparations to conceal the crime before the killing; the defendant's use of a deadly weapon on an unarmed

victim; the particular cruelty of the killing; evidence that the victim was retreating or attempting to flee; infliction of multiple wounds; evidence of the defendant's calmness immediately following the killing; and the defendant's destruction or secretion of evidence after the killing. See State v. Dellinger, 79 S.W.3d 458, 492 (Tenn.), cert. denied, 537 U.S. 1090, 123 S. Ct. 695, 154 L. Ed. 2d 635 (2002); State v. Nichols, 24 S.W.3d 297, 302 (Tenn. 2000); State v. Pike, 978 S.W.2d 904, 914 (Tenn. 1998); Bland, 958 S.W.2d at 660; State v. Lewis, 36 S.W.3d 88, 96 (Tenn. Crim. App. 2000).

The defendant contends that the State failed to prove premeditation beyond a reasonable doubt and that the evidence at most supports a conviction for second degree murder. In support, he points out that there was no evidence that he threatened to kill the victims, took steps to conceal the crime or destroy evidence, or was calm after the killings. The State argues that the evidence was sufficient to sustain the jury's verdicts. We agree with the State.

When viewed in the light most favorable to the State, there was sufficient evidence to show beyond a reasonable doubt that the killings were intentional and premeditated and that the defendant was the perpetrator of the crimes. We acknowledge that Vazquez's and Ross's trial testimony differed from each other on some points and that each of them offered different and conflicting details at trial than they provided in their previous statements to police and other investigators. However, we also note that their testimony was in agreement on other key aspects of the crime, including their purpose in going to the motel room and the activities that the group engaged in before the shootings occurred. Furthermore, the jury could have easily attributed the various inconsistencies and vagueness of their accounts to the effects of the drugs they had ingested during the hours preceding the shooting. This is especially true in the case of Vazquez, who repeatedly testified that he had been smoking marijuana all day on May 28 and was "very high" by the time of the shootings. Vazquez additionally testified that he was asleep when the shootings began, which is another factor that could explain his confusing and sometimes conflicting accounts of the crime and its aftermath.

The evidence, when viewed in the light most favorable to the State, was also sufficient to establish premeditation. It was undisputed that the unarmed victims were killed by gunshots fired into their heads and torsos as they lay together in a double bed. If Ross's testimony is believed, the defendant rose and without warning or provocation walked along the side of the victims' bed to fire his gun at close range at the victims. Vazquez testified that the defendant fled after the crime and confessed to him in the vehicle that he had killed the victims by shooting them in the head, and Ross testified that the defendant threatened to kill her and Vazquez if they told anyone what he had done. The defendant's motive for the killings was suggested by Vazquez's testimony about the large amount of marijuana Ream had with him in the motel room and the evidence that there was a significantly smaller amount of marijuana in the room when the police arrived to begin their investigation. Keeping in mind that credibility determinations are within the province of the jury, we conclude that the above evidence, taken together, was sufficient for the jury to find the defendant guilty of the first degree premeditated murders of the victims.

III. Denial of Petition for Writ of Error Coram Nobis

The defendant also contends that the trial court erred in denying his petition for writ of error coram nobis on the basis of newly discovered evidence. A writ of error coram nobis is an extraordinary remedy by which the trial court may provide relief from a judgment under only narrow and limited circumstances. State v. Mixon, 983 S.W.2d 661, 666 (Tenn. 1999). The remedy is available by statute to a criminal defendant in Tennessee. See Tenn. Code Ann. § 40-26-105 (2003). This statute provides, in pertinent part:

> Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial. The issue shall be tried by the court without the intervention of a jury, and if the decision be in favor of the petitioner, the judgment complained of shall be set aside and the defendant shall be granted a new trial in that cause.

Id. "As a general rule, subsequently or newly discovered evidence which . . . serves no other purpose than to contradict or impeach the evidence adduced during the course of the trial will not justify the granting of a petition for the writ of error coram nobis when the evidence, if introduced, would not have resulted in a different judgment." State v. Hart, 911 S.W.2d 371, 375 (Tenn. Crim. App. 1995) (citations omitted). The decision to grant or deny a petition for writ of error coram nobis based on newly discovered evidence lies within the sound discretion of the trial court. See Mixon, 983 S.W.2d at 666; Hart, 911 S.W.2d at 375. We review this issue, therefore, under an abuse of discretion standard.

The trial court's ruling denying the petition states in pertinent part:

> The evidence in question here is testimonial evidence by Mr. Saunders as to a prior statement made by -- maybe not prior, but a contradictory statement, impeaching statement, made by Ms. Ross and so it is not a piece of evidence, it is not a piece of forensic evidence, it's a piece of testimonial evidence designed to attack her credibility that [sic] showing that she made an inconsistent statement.
>
> Actually, it is more than an inconsistent statement, if believed by the jury, it would be a confession at most, an admission at least, that she was the perpetrator. So in order for this Court to make a determination as to whether or not the Court believes that a result would be different, the Court is called upon in this particular case, based on this particular evidence, to decide the credibility of Judge Justin Saunders, and the Court has weighed it very carefully and decided that his testimony would very likely not be found to be credible. It would very likely have been

discounted by the jury, and so the Court believes that a different result would not have -- that there would not have been a different result.

We find no abuse of discretion on the part of the trial court in denying the petition. The trial court must, in the exercise of its discretion, determine the credibility of the witnesses who testify in support of the petition for writ of error coram nobis. Hart, 911 S.W.2d at 375. We agree with the trial court that the newly discovered evidence in this case, consisting of testimony by an admitted criminal with possible gang connections that Ross, while drunk at a party, shouted out that she had killed Ream, would not have changed the outcome of the trial.

CONCLUSION

Based on our review of the record, the parties' briefs, and the applicable law, we conclude that the trial court properly instructed the jury on the law relating to accomplice testimony and that the evidence was sufficient to sustain the defendant's first degree murder convictions. We further conclude that the trial court did not abuse its discretion in denying the petition for writ of error coram nobis. Accordingly, we affirm the judgments of the trial court.

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ALAN E. GLENN, JUDGE